

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROBERT JAMES STEWART,
WES MARTINSON, *et al.*,

Plaintiffs,

v.

CHELAN COUNTY DISTRICT
COURT, *et al.*,

Defendants.

NO. CV-05-256-RHW

**ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Before the Court are the Lincoln County and Other Defendants' Motion for Summary Judgment (Ct. Rec. 220) and Motion to Dismiss Claim for Plaintiff Estate of Glo H. Stewart (Ct. Rec. 211); Public Utility District No. 1 of Chelan County's Motion for Summary Judgment (Ct. Rec. 225); Defendants Adams County and Adams County District Court's Motion for Summary Judgment (Ct. Rec. 230); Franklin County Defendants' Motion for Summary Judgment (Ct. Rec. 236); and Plaintiff's Motion for Possible Removable of Alleged State Defendants to State Court and Challenge of City of Wen's Motion (Ct. Rec. 216). The motions were heard without oral argument.

BACKGROUND

On August 23, 2005, Plaintiffs filed suit against Adams County; Adams County District Court; Cashmere City Counsel members; City of Cashmere; Chelan County; Chelan County Commissioners; Chelan County District Court; Chelan County PUD # 1; Chelan County Prosecutor's Officer; Chelan County

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT ~ 1**

1 Sheriff's Office; Chelan County Superior Court; Police Officers for the City of
 2 East Wenatchee; Police Officers for the City of Quincy; Police Officers for the
 3 City of Wenatchee; Columbia County; Columbia County Sheriff; Douglas County;
 4 Douglas County District Court; Douglas County Sheriff's Deputies; Douglas
 5 County Superior Court; City of East Wenatchee; Franklin County; Franklin County
 6 District Court; Franklin County Sheriff; Grant County; Grant County District
 7 Court; Grant County Superior Court; Lincoln County; Lincoln County Sheriff
 8 Deputy; Municipal Court for the City of Quincy; City of Quincy; Walla Walla
 9 County; and City of Wenatchee, as well as against individually-named employees
 10 of the above-listed entities. On September 19, 2005, the Court granted Plaintiffs
 11 leave to file an Amended Complaint. On October 4, 2005, Plaintiff filed an
 12 Amended Complaint. On November 21, 2005, the Court ordered Plaintiffs to file a
 13 Second Amended Complaint. On April 17, 2005, Plaintiffs filed a Second
 14 Amended Complaint.

15 On January 5, 2007, the Court granted the State Defendant's Motion for
 16 Summary Judgment and granted the City of Wenatchee and City Police Officers of
 17 City of Wentachee's Motion for Summary Judgment (Ct. Rec. 215).

18 DISCUSSION

19 A. Standard of Review

20 Summary judgment is appropriate if the "pleadings, depositions, answers to
 21 interrogatories, and admissions on file, together with the affidavits, if any, show
 22 that there is no genuine issue as to any material fact and that the moving party is
 23 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). There is no
 24 genuine issue for trial unless there is sufficient evidence favoring the non-moving
 25 party for a jury to return a verdict in that party's favor. *Anderson v. Liberty Lobby,*
 26 *Inc.*, 477 U.S. 242, 250 (1986). The moving party had the initial burden of
 27 showing the absence of a genuine issue of fact for trial. *Celotex Corp. v. Catrett*,
 28 477 U.S. 317, 325 (1986). If the moving party meets its initial burden, the non-

1 moving party must go beyond the pleadings and “set forth specific facts showing
2 that there is a genuine issue for trial. *Id.* at 325; *Anderson*, 477 U.S. at 248.

3 In addition to showing that there are no questions of material fact, the
4 moving party must also show that it is entitled to judgment as a matter of law.
5 *Smith v. University of Washington Law School*, 233 F.3d 1188, 1193 (9th Cir.
6 2000). The moving party is entitled to judgment as a matter of law when the non-
7 moving party fails to make a sufficient showing on an essential element of a claim
8 on which the non-moving party has the burden of proof. *Celotex*, 477 U.S. at 323.

9 When considering a motion for summary judgment, a court may neither
10 weigh the evidence nor assess credibility; instead, “the evidence of the non-movant
11 is to be believed, and all justifiable inferences are to be drawn in his favor.”
12 *Anderson*, 477 U.S. at 255.

13 **B. Failure of Plaintiffs to Respond**

14 Plaintiffs failed to respond to the pending motions. Pursuant to LR
15 7.1(h)(5), a failure to timely file a memorandum of points and authorities in
16 opposition to any motion may be considered by the Court as consent on the part of
17 the party failing to file such memorandum to the entry of an order adverse to the
18 party in default. The Court considers Plaintiffs’ failure to respond as consent to the
19 granting of summary judgment.

20 **C. Lincoln County and Other Defendants’ Motion for Summary Judgment**

21 For the following reasons, the Lincoln County and Other Defendants’
22 Motion for Summary Judgment is granted.

23 First, the individuals being sued in the action who are government officials
24 are entitled to qualified immunity. Plaintiffs have not established that these
25 individuals have violated clearly established constitutional rights. *Saucier v. Katz*,
26 533 U.S. 194, 204 (2001).

27 Second, Plaintiffs have failed to establish that there is a genuine issue of
28 material fact that any material interaction between the Lincoln County and other

1 Defendants took place less than three years prior to the filing of this lawsuit. *See*
2 *Owens v. Okure*, 488 U.S. 235, 249-50 (1989) (the limitation period for § 1983
3 claims is determined by the state statute of limitations; Wash. Rev. Code §
4 4.16.080 (3-year statute of limitations for personal injury)).

5 Third, to the extent that Plaintiffs are relitigating claims or issues decided in
6 the state court proceedings, dependency orders, traffic infractions, and workers'
7 compensation decisions, the doctrine of *res judicata* precludes Plaintiff from
8 relitigating these issues in federal court. *Mpoyo v. Litton Electric-Optical Systems*,
9 430 F.3d 985, 987 (9th Cir. 2005) (*Res judicata* applies when “the earlier suit (1)
10 involved the same ‘claim’ or cause of action as the later suit, (2) reached a final
11 judgment on the merits, and (3) involved identical parties or privies.”)

12 Fourth, the Grant County District Court, the Grant County Superior Court,
13 and the Municipal Court of the City of Quincy are entitled to absolute immunity.
14 *See Sadoski v. Mosley*, 435 F.3d 1076, 1079 (9th Cir. 2006). There is nothing in the
15 record that indicates the court acted “in the clear absence of all jurisdiction.” *Id.*

16 Finally, the section 1983 claims against Defendants Lincoln County, Grant
17 County, City of Cashmere, City of East Wenatchee, and the City of Quincy are
18 dismissed because Plaintiffs have failed to establish there is a genuine issue of
19 material fact that any alleged constitutional violation was the result of a policy or
20 custom. *See Monell v. Dep’t of Soc. Serv.*, 436 U.S. 658 (1978).

21 Moreover, Plaintiffs have failed to provide any factual support for any of
22 their allegations against the Lincoln County and other Defendants. As such,
23 summary judgment with regard to the all of the claims asserted against the
24 following Defendants is appropriate: Lincoln County, Grant County, the City of
25 Cashmere, Cashmere City Counsel members, the City of East Wenatchee, the City
26 of Quincy, Allan Galbraith, Erik Bakke, Gordon Irle, Frank McWhirter [Frank
27 Mcwither], Michelle Taylor, Jon Skoglun, Barbara Wolff, Bruce W. Moses,
28 Randyl Webb, Dean T. Falteisek, George Valison, Jerry Lane, current or former

1 Lincoln County Sheriff's Department deputies, and city police officers of the City
2 of East Wenatchee and the City of Quincy, Grant County District Court, Grant
3 County Superior Court, and the Municipal Court of the City of Quincy.

4 **D. Public Utility District No. 1 of Chelan County's Motion for Summary**
5 **Judgment**

6 For the following reasons, Defendant Public Utility District No. 1 of Chelan
7 County's Motion for Summary Judgment is granted.

8 First, Plaintiffs have failed to state a claim against Defendant Public Utility
9 District of No. 1 of Chelan County in that Plaintiffs have failed to reference the
10 District in the body of the Complaint or in any subsequently filed Amended
11 Complaint.

12 Second, Plaintiffs have failed to state specific facts in support of their
13 constitutional claims which deprives this Court of original subject matter
14 jurisdiction over the District. 28 U.S.C. § 1331.

15 **E. Adams County and Adams County District Court's Motion for**
16 **Summary Judgment**

17 For the following reasons, Defendants Adams County and Adams County
18 District Court's Motion for Summary Judgment is granted.

19 First, Plaintiffs have failed to establish there is a genuine issue of material
20 fact regarding whether the Adam's County Defendants falsely arrested or
21 imprisoned any specifically-named Plaintiffs, or that their claims fall within the
22 statute of limitations period. *See* Wash. Rev. Code § 4.16.100 (statute of
23 limitations for action for false imprisonment is two years).

24 Second, Plaintiffs have failed to state specific facts in support of their
25 constitutional claims which deprives this Court of original subject matter
26 jurisdiction over the Defendants.

27 Third, the Adams County District Court is entitled to absolute immunity.
28 *See Sadoski*, 435 F.3d at 1079. There is nothing in the record to indicate that the
court acted "in the clear absence of all jurisdiction." *Id.*

1 Finally, the section 1983 claims against Defendant Adams County are
2 dismissed because Plaintiffs have failed to establish there is a genuine issue of
3 material fact that any alleged constitutional violation was the result of a policy or
4 custom. *See Monell*, 436 U.S. at 692.

5 Moreover, Plaintiffs have failed to provide any factual support for any of
6 their allegations against the Adams County Defendants. As such, summary
7 judgment with regard to all of the claims asserted against the Adams County
8 Defendants is appropriate.

9 **F. Franklin County Defendants' Motion for Summary Judgment**

10 The Franklin County Defendants request permission to file an over-length
11 memorandum; ask the Court to find its requests for admission admitted pursuant to
12 Fed. R. Civ. P. 36, and ask the Court for an order granting summary judgment in
13 their favor. For the following reasons, the Court grants the Franklin County
14 Defendants' requests.

15 First, by failing to respond to Defendants' requests for admissions, Plaintiffs
16 have admitted the following facts: (1) the Franklin County Defendants have not
17 violated their constitutional rights; and (2) the Franklin County Defendants'
18 conduct has not harmed them in any way. Based on these admissions, Plaintiffs
19 have failed to state a claim against the Franklin County Defendants.

20 Second, Plaintiffs' Complaint and Amended Complaint fail to allege specific
21 facts as to any action taken by the Franklin County Defendants, nor have they
22 alleged specific dates or any facts pertaining to how the Franklin County
23 Defendants may have caused harm to the Plaintiffs. As such, summary judgment
24 with regard to all of the claims asserted against Franklin County, Franklin County
25 Sheriff's Unknown Deputy, and Franklin County District Court is appropriate.

26 **G. Supplemental Jurisdiction**

27 Because the Court concludes that Plaintiffs have failed to establish that a
28 genuine issue of material exists regarding whether these Defendants violated their

1 constitutional rights, the Court declines to exercise its supplemental jurisdiction
2 over any remaining state claims. *See* 28 U.S.C. § 1367(c); *see also Carnegie-*
3 *Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988) (“in the usual case in which
4 all federal-law claims are eliminated before trial, the balance of factors to be
5 considered under the pendent jurisdiction doctrine—judicial economy,
6 convenience, fairness, and comity—will point toward declining to exercise
7 jurisdiction over the remaining state-law claims.”); *United Mine Workers of Am. v.*
8 *Gibbs*, 383 U.S. 715, 726 (1966).

9 **H. Defendant Lincoln County and Other Defendant’s Motion to Dismiss**
10 **Claim of Plaintiff Estate of Glo H. Stewart**

11 Defendants assert that the estate claim of Glo H. Stewart is being brought by
12 Donald Stewart, of Cashmere, who is not a lawyer licensed to practice law in the
13 state of Washington. Mr. Stewart is not permitted to represent the Estate of Glo H.
14 Stewart on this action. *See Jones v. Correctional Med. Servs., Inc.*, 401 F.3d 950,
15 951-52 (8th Cir. 2005) (interpreting 28 U.S.C. § 1654 as prohibiting a non-attorney
16 administrator of an estate from proceeding *pro se*). Dismissal is the proper remedy
17 where a *pro se* plaintiff is purported to be representing the estate in litigating an
18 interest specific to the estate. *Iannaccone v. Law*, 142 F.3d 553, 559 (2nd Cir.
19 1998).

20 Accordingly, **IT IS HEREBY ORDERED:**

21 1. The Lincoln County and other Defendants’ Motion for Summary
22 Judgment (Ct. Rec. 220) is **GRANTED**. The following Defendants are dismissed
23 from the above-captioned cases: Lincoln County, Grant County, the City of
24 Cashmere, Cashmere City Counsel members, the City of East Wenatchee, the City
25 of Quincy, Allan Galbraith, Erik Bakke, Gordon Irle, Frank McWhirter [Frank
26 Mcwither], Michelle Taylor, Jon Skoglun, Barbara Wolff, Bruce W. Moses,
27 Randyl Webb, Dean T. Falteisek, George Valison, Jerry Lane, current or former
28 Lincoln County Sheriff’s Department deputies, and city police officers of the City

1 of East Wenatchee and the City of Quincy, Grant County District Court, Grant
2 County Superior Court, and the Municipal Court of the City of Quincy.

3 2. Public Utility District No. 1 of Chelan County's Motion for Summary
4 Judgment (Ct. Rec. 225) is **GRANTED**.

5 3. The Adams County's and Adams County District Court's Motion for
6 Summary Judgment (Ct. Rec. 230) is **GRANTED**.

7 4. The Franklin County Defendants' Motion for Order to File Over-
8 Length Memorandum, for Order Finding its Requests for Admission Admitted and
9 for Summary Judgment (Ct. Rec. 236) is **GRANTED**. The following Defendants
10 are dismissed from the above-captioned case: Franklin County, Franklin County
11 District Court, and Franklin County Sheriff and Unknown Deputy.

12 5. The Lincoln County and other Defendants' Motion to Dismiss Claim
13 of Plaintiff Estate of Glo H. Stewart (Ct. Rec. 211) is **GRANTED**. Plaintiff Estate
14 of Glo H. Stewart is **dismissed** from this action.

15 6. Plaintiff's Motion for Possible Removal of Alleged State Defendants
16 to State Court and Challenge of City of Wen's Motion (Ct. Rec. 216) is **DENIED**
17 as moot.

18 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
19 Order and forward copies to counsel and Plaintiffs.

20 **DATED** this 19th day of March, 2007.

21 *S/ Robert H. Whaley*

22 ROBERT H. WHALEY
23 Chief United States District Judge

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